

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LINDA CAVERLY,

Plaintiff,

Case No. 16-cv-10707

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

FANNIE MAE, et al,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING MOTIONS
TO DISMISS, AND DISMISSING PLAINTIFF'S AMENDED COMPLAINT**

On February 26, 2016, Defendants removed this case from Cheboygan County Circuit Court. ECF No. 1. In the underlying Complaint, Plaintiff Linda Caverly alleged that the mortgage foreclosure sale of her home should be voided because of fraud and irregularities in the foreclosure process. The case was referred to Magistrate Judge Patricia T. Morris. ECF No. 11. On March 28, 2016, Plaintiff filed an Amended Complaint, ECF No. 13, which contained materially similar allegations and added several new counts. All of Plaintiff's allegations arise out of the Defendants' purported misconduct and misrepresentations surrounding the handling of the mortgage foreclosure, sale of the property, and Plaintiff's attempts to reinstate the mortgage. *Id.* On March 28, 2016, Plaintiff filed a motion to remand the case to state court. ECF No. 14. On June 10, 2016, Judge Morris issued a report recommending that the motion to remand be denied and which concluded that Defendant Trott Law, P.C., was fraudulently joined. ECF No. 21. Despite concluding that Trott Law should be dismissed, the report did not actually recommend that Trott Law be dismissed. No objections to the report and recommendation were filed, and this Court adopted the report and recommendation on July 28, 2016. ECF No. 22.

On August 11, 2016, Defendant Everbank Mortgage Company filed a motion to dismiss. ECF No. 26. On November 8, 2016, Trott Law filed a motion for an order of dismissal pursuant to Federal Rule of Civil Procedure 55.2(d). ECF No. 28. Plaintiff did not file a response to either motion, despite being directly ordered to respond by Judge Morris. ECF Nos. 27, 29. On December 8, 2016, Judge Morris issued a report recommending that both motions to dismiss be granted and that Plaintiff's Amended Complaint be dismissed. ECF No. 30. In the report, Judge Morris finds that Plaintiff has not stated a claim upon which relief can be based in any of her claims. Specifically, Judge Morris notes that evidence which Plaintiff attached to her pleadings contradicts her allegations. Further, Plaintiff does not adequately allege that there was any fraud or irregularity in the foreclosure process, meaning she cannot challenge the results of the foreclosure. Because Judge Morris concluded that none of the claims in Plaintiff's complaint stated a cause of action, she recommended that the entire complaint be dismissed. Thus, even though Defendant Fannie Mae did not file a motion to dismiss, all Defendants and the complaint will be dismissed because the entire complaint is deficient.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 30, is **ADOPTED**.

It is further **ORDERED** that Defendant Everbank Mortgage Company's motion to dismiss, ECF No. 26, is **GRANTED**.

It is further **ORDERED** that Defendant Trott Law, P.C.'s, motion for dismissal, ECF No. 28, is **GRANTED**.

It is further **ORDERED** that Plaintiff Linda Caverly's Amended Complaint, ECF No. 13, is **DISMISSED with prejudice**.

Dated: January 5, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 5, 2017.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager